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Parent topic: Defense Federal Acquisition Regulation

212.001 Definitions. As used in this part—

“Market research” means a review of existing systems, subsystems, capabilities, and technologies that are available or could be made available to meet the needs of DoD in whole or in part. The review shall include, at a minimum, contacting knowledgeable individuals in Government and industry regarding existing market capabilities and pricing information, and may include any of the techniques for conducting market research provided in FAR 10.002(b)(2) (section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92)).

SUBPART 212.1 —ACQUISITION OF COMMERCIAL ITEMS - GENERAL

212.102 Applicability.

(a)(i) *Use of FAR part 12 procedures.* Use of FAR part 12 procedures is based on—

(A) A determination that an item is a commercial item (see paragraph (a)(iii) of this section); or

(B) Applicability of one of the following statutes that provide for treatment as a commercial item and use of FAR part 12 procedures, even though the item may not meet the definition of "commercial product" or "commercial service" at FAR 2.101 and does not require a commercial item determination:

(1) 41 U.S.C. 1903 - Supplies or services to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack pursuant to FAR 12.102(f).

(2) 10 U.S.C. 2380a - Supplies or services from nontraditional defense contractors pursuant to 212.102 (a)(iv).

(ii) Prior use of FAR part 12 procedures.

(A) Pursuant to 10 U.S.C. 2380(c), except as provided in paragraph (a)(ii)(B) of this section or unless the item was acquired pursuant to paragraph (a)(i)(B) of this section, if the Commercial Item Database (for website see PGI [212.102](#)(a)(iii)(B)(4)) contains a prior commerciality determination, or the contracting officer has other evidence that an item has previously been acquired by DoD using commercial item acquisition procedures under FAR [part 12](#), then the prior contract shall serve as a prior determination that an item is a commercial item. The contracting officer shall document the file accordingly.

(B)(1) If the item to be acquired meets the criteria in paragraph (a)(ii)(A) of this section, the item may not be acquired using other than FAR part 12 procedures unless the head of the contracting activity issues a determination as specified in paragraph (a)(ii)(B)(2)(ii) of this section.

(2) Pursuant to 10 U.S.C. 2306a(b)(4)(A), the contracting officer may presume that a prior commercial item determination made by a military department, a defense agency, or another component of DoD shall serve as a determination for subsequent procurements of such item. In accordance with 10 U.S.C. 2306a(b)(4) and 10 U.S.C. 2380(c), if the contracting officer questions a prior determination to use FAR part 12 procedures and instead chooses to proceed with a procurement of an item previously determined to be a commercial item using procedures other than FAR part 12 procedures, the contracting officer shall request a review by the head of the contracting activity that will conduct the procurement. Not later than 30 days after receiving a request for review, the head of the contracting activity shall—

(i) Confirm that the prior use of FAR part 12 procedures was appropriate and still applicable; or

(ii) Issue a determination that the prior use of FAR part 12 procedures was improper or that it is no longer appropriate to acquire the item using FAR part 12 procedures, with a written explanation of the basis for the determination.

(iii) Commercial item determination. Unless the procedures in paragraph (a)(ii) of this section are applicable, when using FAR part 12 procedures for acquisitions of commercial items pursuant to [212.102\(a\)\(i\)\(A\)](#) that exceed the simplified acquisition threshold, the contracting officer shall—

(A) Determine in writing that the acquisition meets the commercial product or commercial service definition in FAR 2.101;

(B) Include the written determination in the contract file; and

(C) Obtain approval at one level above the contracting officer when a commercial item determination relies on paragraphs (1)(ii), (3), or (4), or (6) of the "commercial product" definition at FAR 2.101 or paragraph (2) of the "commercial service" definition at FAR 2.101; and

(D) Follow the procedures and guidance at PGI [212.102](#) (a)(iii) regarding file documentation and commercial item determinations.

(iv) *Nontraditional defense contractors.* In accordance with 10 U.S.C. 2380a, contracting officers—

(A) Except as provided in paragraph (a)(iv)(B) of this section, may treat supplies and services provided by nontraditional defense contractors as commercial items. This permissive authority is intended to enhance defense innovation and investment, enable DoD to acquire items that otherwise might not have been available, and create incentives for nontraditional defense contractors to do business with DoD. It is not intended to recategorize current noncommercial items; however, when

appropriate, contracting officers may consider applying commercial item procedures to the procurement of supplies and services from business segments that meet the definition of “nontraditional defense contractor” even though they have been established under traditional defense contractors. The decision to apply commercial item procedures to the procurement of supplies and services from nontraditional defense contractors does not require a commercial item determination and does not mean the item is commercial;

(B) Shall treat services provided by a business unit that is a nontraditional defense contractor as commercial items, to the extent that such services use the same pool of employees as used for commercial customers and are priced using methodology similar to methodology used for commercial pricing; and

(C) Shall document the file when treating supplies or services from a nontraditional defense contractor as commercial items in accordance with paragraph (a)(iv)(A) or (B) of this section.

(v) *Commercial item guidebook*. For a link to the commercial item guidebook, see PGI [212.102\(a\)\(v\)](#).

SUBPART 212.2 —SPECIAL REQUIREMENTS FOR THE ACQUISITION OF COMMERCIAL ITEMS

212.203 Procedures for solicitation, evaluation, and award.

(1) See [215.101-2-70](#) for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to the acquisition of commercial items.

(2) See [217.7801](#) for the prohibition on the use of reverse auctions for personal protective equipment and aviation critical safety items.

212.205 Offers.

(c) When using competitive procedures, if only one offer is received, the contracting officer shall follow the procedures at [215.371](#) .

212.207 Contract type.

(b) In accordance with section 805 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), use of time-and-materials and labor-hour contracts for the acquisition of commercial items is authorized only for the following:

(i) Services acquired for support of a commercial item, as described in paragraph (5) of the definition of “commercial item” at FAR 2.101 (41 U.S.C. 103).

(ii) Emergency repair services.

(iii) Any other commercial services only to the extent that the head of the agency concerned approves a written determination by the contracting officer that—

(A) The services to be acquired are commercial services as defined in paragraph (6) of the definition of “commercial item” at FAR 2.101 (41 U.S.C. 103);

(B) If the services to be acquired are subject to FAR 15.403-1(c)(3)(ii), the offeror of the services has submitted sufficient information in accordance with that subsection;

(C) Such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(D) The use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

212.209 Determination of price reasonableness.

(a) In accordance with 10 U.S.C. 2377(d), agencies shall conduct or obtain market research to support the determination of the reasonableness of price for commercial items contained in any bid or offer submitted in response to an agency solicitation. To the extent necessary to support such market research, the contracting officer—

(1) In the case of major weapon systems items acquired as commercial items in accordance with subpart 234.70, shall use information submitted under 234.7002(d); and

(2) In the case of other items, may require the offeror to submit other relevant information

(b) If the contracting officer determines that the information obtained through market research pursuant to paragraph (a) of this section, is insufficient to determine the reasonableness of price, the contracting officer shall consider information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial items under comparable terms and conditions in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison. In assessing whether the prices previously paid remain a valid reference for comparison, the contracting officer shall consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (10 U.S.C. 2306a(b)).

(c) If the contracting officer determines that the offeror cannot provide sufficient information as described in paragraph (b) of this section to determine the reasonableness of price, the contracting officer should request the offeror to submit information on—

(1) Prices paid for the same or similar items sold under different terms and conditions;

(2) Prices paid for similar levels of work or effort on related products or services;

(3) Prices paid for alternative solutions or approaches; and

(4) Other relevant information that can serve as the basis for determining the reasonableness of price.

(d) Nothing in this section shall be construed to preclude the contracting officer from requiring the contractor to supply information that is sufficient to determine the reasonableness of price, regardless of whether or not the contractor was required to provide such information in connection with any earlier procurement. If the contracting officer determines that the pricing information

submitted is not sufficient to determine the reasonableness of price, the contracting officer may request other relevant information regarding the basis for price or cost, including uncertified cost data such as labor costs, material costs, and other direct and indirect costs.

212.211 Technical data.

The DoD policy for acquiring technical data for commercial items is at [227.7102](#) .

212.212 Computer software.

(1) Departments and agencies shall identify and evaluate, at all stages of the acquisition process (including concept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(2) See Subpart 208.74 when acquiring commercial software or software maintenance. See [227.7202](#) for policy on the acquisition of commercial computer software and commercial computer software documentation.

212.270 Major weapon systems as commercial items.

The DoD policy for acquiring major weapon systems as commercial items is in Subpart 234.70.

212.271 Limitation on acquisition of right-hand drive passenger sedans.

10 U.S.C. 2253(a)(2) limits the authority to purchase right-hand drive passenger sedans to a cost of not more than \$45,000 per vehicle.

212.272 Preference for certain commercial products and services.

(a) As required by section 855 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92), for requirements relating to the acquisition of commercial information technology products and services, see [239.101](#) .

(b)(1) As required by section 876 of the National Defense Authorization Act of Fiscal Year 2017 (Pub. L. 114-328), a contracting officer may not enter into a contract above the simplified acquisition threshold for facilities-related services, knowledge-based services (except engineering services), medical services, or transportation services that are not commercial services unless the appropriate official specified in paragraph (b)(2) of this section determines in writing that no commercial services are suitable to meet the agency's needs as provided in section 10 U.S.C. 2377(c)(2).

(2) The following officials are authorized to make the determination specified in paragraph (b)(1) of this section:

(i) For contracts above \$10 million, the head of the contracting activity, the combatant commander

of the combatant command concerned, or the Under Secretary of Defense for Acquisition and Sustainment (as applicable).

(ii) For contracts in an amount above the simplified acquisition threshold and at or below \$10 million, the contracting officer.

SUBPART 212.3 —SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(c) Include an evaluation factor regarding supply chain risk (see subpart 239.73) when acquiring information technology, whether as a service or as a supply, that is a covered system, is a part of a covered system, or is in support of a covered system, as defined in [239.7301](#).

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at <https://www.sam.gov>, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

(i) *Part 203 - Improper Business Practices and Personal Conflicts of Interest.*

(A) Use the FAR clause at 52.203-3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.

(B) Use the clause at [252.203-7000](#), Requirements Relating to Compensation of Former DoD Officials, as prescribed in 203.171-4(a), to comply with section 847 of Pub. L. 110-181.

(C) Use the clause at [252.203-7003](#), Agency Office of the Inspector General, as prescribed in [203.1004\(a\)](#), to comply with section 6101 of Pub. L. 110-252 and 41 U.S.C. 3509.

(D) Use the provision at [252.203-7005](#), Representation Relating to Compensation of Former DoD Officials, as prescribed in [203.171-4\(b\)](#).

(ii) *Part 204-Administrative and Information Matters.*

(A) Use the clause at [252.204-7004](#), Antiterrorism Awareness Training for Contractors, as prescribed in [204.7203](#).

(B) Use the provision at [252.204-7008](#), Compliance with Safeguarding Covered Defense Information Controls, as prescribed in [204.7304\(a\)](#).

(C) Use the clause at [252.204-7009](#), Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information, as prescribed in [204.7304\(b\)](#).

(D) Use the clause at [252.204-7012](#), Safeguarding Covered Defense Information and Cyber Incident

Reporting, as prescribed in [204.7304\(c\)](#).

(E) Use the clause at [252.204-7014](#), Limitations on the Use or Disclosure of Information by Litigation Support Contractors, as prescribed in [204.7403\(a\)](#), to comply with 10 U.S.C. 129d.

(F) Use the clause at [252.204-7015](#), Notice of Authorized Disclosure of Information for Litigation Support, as prescribed in [204.7403\(b\)](#), to comply with 10 U.S.C. 129d.

(G) Use the provision at [252.204-7016](#), Covered Defense Telecommunications Equipment or Services - Representation, as prescribed in [204.2105\(a\)](#), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(H) Use the provision at [252.204-7017](#), Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services - Representation, as prescribed in [204.2105\(b\)](#), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(I) Use the clause at [252.204-7018](#), Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, as prescribed in [204.2105\(c\)](#), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(J) Use the provision at [252.204-7019](#), Notice of NIST SP 800-171 DoD Assessment Requirements, as prescribed in [204.7304 \(d\)](#).

(K) Use the clause at [252.204-7020](#), NIST SP 800-171 DoD Assessment Requirements, as prescribed in [204.7304 \(e\)](#).

(L) Use the clause at [252.204-7021](#), Cybersecurity Maturity Model Certification Requirements, as prescribed in [204.7503 \(a\)](#) and [\(b\)](#).

(M) Use the clause at [252.204-7022](#), Expediting Contract Closeout, as prescribed in [204.804-70 Contract clause.](#)

(N) Use the clause at , Reporting Requirements for Contracted Services, to comply with [10 U.S.C. 2330a](#) .

(1) Use the basic clause as prescribed in [204.1705\(a\)\(i\)](#) and [\(ii\)](#).

(2) Use the alternate I clause as prescribed in [204.1705\(a\)\(i\)](#) and [\(iii\)](#).

(iii) *Part 205 - Publicizing Contract Actions.* Use the clause at [252.205-7000](#), Provision of Information to Cooperative Agreement Holders, as prescribed in [205.470](#), to comply with 10 U.S.C. 2416.

(iv) *Part 211 - Describing Agency Needs.*

(A) Use the clause at [252.211-7003](#), Item Unique Identification and Valuation, as prescribed in [211.274-6\(a\)\(1\)](#).

(B) Use the provision at [252.211-7006](#), Passive Radio Frequency Identification, as prescribed in [211.275-3](#).

(C) Use the clause at [252.211-7007](#), Reporting of Government-Furnished Property, as prescribed in [211.274-6](#).

(D) Use the clause at [252.211-7008](#), Use of Government-Assigned Serial Numbers, as prescribed in [211.274-6\(c\)](#).

(v) *Part 213 - Simplified Acquisition Procedures*. Use the provision at [252.213-7000](#), Notice to Prospective Suppliers on Use of Supplier Performance Risk System in Past Performance Evaluations, as prescribed in [213.106-2-70](#).

(vi) *Part 215 - Contracting by Negotiation*.

(A) Use the provision at [252.215-7003](#), Requirements for Submission of Data Other Than Certified Cost or Pricing Data - Canadian Commercial Corporation, as prescribed at [215.408\(2\)\(i\)](#).

(B) Use the clause at [252.215-7004](#), Requirement for Submission of Data other Than Certified Cost or Pricing Data - Modifications - Canadian Commercial Corporation, as prescribed at [215.408\(2\)\(ii\)](#).

(C) Use the provision at [252.215-7007](#), Notice of Intent to Resolicit, as prescribed in [215.371-6](#).

(D) Use the provision [252.215-7008](#), Only One Offer, as prescribed at [215.408\(3\)](#).

(E) Use the provision [252.215-7010](#), Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, as prescribed at [215.408\(5\)\(i\)](#) to comply with section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and sections 851 and 853 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(1) Use the basic provision as prescribed at [215.408\(5\)\(i\)\(A\)](#).

(2) Use the alternate I provision as prescribed at [215.408\(5\)\(i\)\(B\)](#).

(F) Use the provision at [252.215-7016](#), Notification to Offerors—Postaward Debriefings, as prescribed in [215.570](#), to comply with section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(vii) *Part 216—Types of Contracts*. Use the clause at [252.216-7010](#), Postaward Debriefings for Task Orders and Delivery Orders, as prescribed in [216.506-70\(b\)](#), to comply with section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91).

(viii) *Part 219 - Small Business Programs*.

(A) Use the provision at [252.219-7000](#), Advancing Small Business Growth, as prescribed in [219.309\(1\)](#), to comply with 10 U.S.C. 2419.

(B) Use the clause at [252.219-7003](#), Small Business Subcontracting Plan (DoD Contracts), to comply with 15 U.S.C. 637.

(1) Use the basic clause as prescribed in [219.708\(b\)\(1\)\(A\)\(1\)](#).

(2) Use the alternate I clause as prescribed in [219.708\(b\)\(1\)\(A\)\(2\)](#).

(3) Use the alternate II clause as prescribed in [219.708\(b\)\(1\)\(A\)\(3\)](#).

(C) Use the clause at [252.219-7004](#), Small Business Subcontracting Plan (Test Program), as prescribed in [219.708\(b\)\(1\)\(B\)](#), to comply with 15 U.S.C. 637 note.

(D) Use the provision at [252.219-7000](#), Advancing Small Business Growth, as prescribed in

219.309(1), to comply with 10 U.S.C. 2419.

(E) Use the provision at 252.219-7012, Competition for Religious-Related Services, as prescribed in 219.270-3.

(ix) *Part 223 - Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace.* Use the clause at 252.223-7008, Prohibition of Hexavalent Chromium, as prescribed in 223.7306.

(x) *Part 225 - Foreign Acquisition.*

(A) Use the provision at 252.225-7000, Buy American - Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(1) Use the basic provision as prescribed in 225.1101(1)(i).

(2) Use the alternate I provision as prescribed in 225.1101(1)(ii).

(B) Use the clause at 252.225-7001, Buy American and Balance of Payments Program, to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act.

(1) Use the basic clause as prescribed in 225.1101(2)(ii).

(2) Use the alternate I clause as prescribed in 225.1101(2)(iii).

(C) Use the clause at 252.225-7006, Acquisition of the American Flag, as prescribed in 225.7002-3(c), to comply with section 8123 of the DoD Appropriations Act, 2014 (Pub. L. 113-76, division C, title VIII), and the same provision in subsequent DoD appropriations acts.

(D) Use the clause at 252.225-7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, as prescribed in 225.1103(4), to comply with section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (Pub. L. 109-163) as amended by the NDAA for FY 2012 and FY 2017.

(E) Use the clause at 252.225-7008, Restriction on Acquisition of Specialty Metals, as prescribed in 225.7003-5(a)(1), to comply with 10 U.S.C. 2533b.

(F) Use the clause at 252.225-7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, as prescribed in 225.7003-5(a)(2), to comply with 10 U.S.C. 2533b.

(G) Use the provision at 252.225-7010, Commercial Derivative Military Article - Specialty Metals Compliance Certificate, as prescribed in 225.7003-5(b), to comply with 10 U.S.C. 2533b.

(H) Use the clause at 252.225-7012, Preference for Certain Domestic Commodities, as prescribed in 225.7002-3(a), to comply with 10 U.S.C. 2533a.

(I) Use the clause at 252.225-7015, Restriction on Acquisition of Hand or Measuring Tools, as prescribed in 225.7002-3(b), to comply with 10 U.S.C. 2533a.

(J) Use the clause at 252.225-7016, Restriction on Acquisition of Ball and Roller Bearings, as prescribed in 225.7009-5, to comply with section 8065 of Pub. L. 107-117 and the same restriction in subsequent DoD appropriations acts.

(K) Use the clause at [252.225-7017](#), Photovoltaic Devices, as prescribed in [225.7017-4\(a\)](#), to comply with section 846 of Public Law 111-383.

(L) Use the provision at [252.225-7018](#), Photovoltaic Devices - Certificate, as prescribed in [225.7017-4\(b\)](#), to comply with section 846 of Public Law 111-383.

(M) Use the provision at [252.225-7020](#), Trade Agreements Certificate, to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note. Alternate I also implements section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic provision as prescribed in [225.1101\(5\)\(i\)](#).

(2) Use the alternate I provision as prescribed in [225.1101\(5\)\(ii\)](#).

(N) Use the clause at [252.225-7021](#), Trade Agreements to comply with 19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note.

(1) Use the basic clause as prescribed in [225.1101\(6\)\(i\)](#).

(2) Use the alternate II clause as prescribed in [225.1101\(6\)\(iii\)](#).

(O) Use the provision at [252.225-7023](#), Preference for Products or Services from Afghanistan, as prescribed in [225.7703-4\(a\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(P) Use the clause at [252.225-7024](#), Requirement for Products or Services from Afghanistan, as prescribed in [225.7703-4\(b\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(Q) Use the clause at [252.225-7026](#), Acquisition Restricted to Products or Services from Afghanistan, as prescribed in [225.7703-4\(c\)](#), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(R) Use the clause at [252.225-7027](#), Restriction on Contingent Fees for Foreign Military Sales, as prescribed in [225.7307\(a\)](#), to comply with 22 U.S.C. 2779.

(S) Use the clause at [252.225-7028](#), Exclusionary Policies and Practices of Foreign Governments, as prescribed in [225.7307\(b\)](#), to comply with 22 U.S.C. 2755.

(T) Use the clause at [252.225-7029](#), Acquisition of Uniform Components for Afghan Military or Afghan National Police, as prescribed in [225.7703-4\(d\)](#).

(U) Use the provision at [252.225-7031](#), Secondary Arab Boycott of Israel, as prescribed in [225.7605](#), to comply with 10 U.S.C. 2410i.

(V) Use the provision at [252.225-7035](#), Buy American - Free Trade Agreements - Balance of Payments Program Certificate, to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic provision as prescribed in [225.1101\(9\)\(i\)](#).

(2) Use the alternate I provision as prescribed in [225.1101\(9\)\(ii\)](#).

(3) Use the alternate II provision as prescribed in [225.1101\(9\)\(iii\)](#).

(4) Use the alternate III provision as prescribed in [225.1101\(9\)\(iv\)](#).

(5) Use the alternate IV provision as prescribed in [225.1101\(9\)\(v\)](#).

(6) Use the alternate V provision as prescribed in [225.1101\(9\)\(vi\)](#).

(W) Use the clause at [252.225-7036](#), Buy American - Free Trade Agreements - Balance of Payments Program to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Alternates II, III, and V also implement section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181).

(1) Use the basic clause as prescribed in [225.1101\(10\)\(i\)\(A\)](#).

(2) Use the alternate I clause as prescribed in [225.1101\(10\)\(i\)\(B\)](#).

(3) Use the alternate II clause as prescribed in [225.1101\(10\)\(i\)\(C\)](#).

(4) Use the alternate III clause as prescribed in [225.1101\(10\)\(i\)\(D\)](#).

(5) Use the alternate IV clause as prescribed in [225.1101\(10\)\(i\)\(E\)](#).

(6) Use the alternate V clause as prescribed in [225.1101\(10\)\(i\)\(F\)](#).

(X) Use the provision at [252.225-7037](#), Evaluation of Offers for Air Circuit Breakers, as prescribed in 225.7006-4(a), to comply with 10 U.S.C. 2534(a)(3).

(Y) Use the clause at [252.225-7038](#), Restriction on Acquisition of Air Circuit Breakers, as prescribed in [225.7006-4\(b\)](#), to comply with 10 U.S.C. 2534(a)(3).

(Z) Use the clause at [252.225-7039](#), Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in [225.302-6](#), to comply with section 2 of Pub. L. 110-181, as amended.

(AA) Use the clause at [252.225-7040](#), Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, as prescribed in [225.371-5\(a\)](#).

(BB) Use the clause at [252.225-7043](#), Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in [225.372-2](#).

(CC) Use the provision at [252.225-7049](#), Prohibition on Acquisition of Certain Foreign Commercial Satellite Services - Representations, as prescribed in [225.772-5\(a\)](#), to comply with 10 U.S.C. 2279.

(DD) Use the provision at [252.225-7050](#), Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, as prescribed in [225.771-5](#), to comply with 10 U.S.C. 2327(b).

(EE) Use the clause at [252.225-7051](#), Prohibition on Acquisition for Certain Foreign Commercial Satellite Services, as prescribed in [225.772-5\(b\)](#), to comply with 10 U.S.C. 2279.

(FF) Use the clause at [252.225-7052](#), Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, as prescribed in 225.7018-5.

(GG) Use the provision at [252.225-7053](#), Representation Regarding Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, as prescribed in 225.7019-4(a), to comply with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 ([Pub. L. 116-92](#)).

(HH) Use the clause at [252.225-7054](#), Prohibition on Use of Certain Energy Sourced from Inside the Russian Federation, as prescribed in 225.7019-4(b), to comply with section 2821 of the National Defense Authorization Act for Fiscal Year 2020 ([Pub. L. 116-92](#)).

(II) Use the provision at [252.225-7055](#), Representation Regarding Business Operations with the Maduro Regime, as prescribed in [225.7020-5\(a\)](#), to comply with section 890 of the National Defense Authorization Act for Fiscal Year 2020 ([Pub. L. 116-92](#)).

(JJ) Use the clause at [252.225-7056](#), Prohibition Regarding Business Operations with the Maduro Regime, as prescribed in 225.7020-5(b), to comply with section 890 of the National Defense Authorization Act for Fiscal Year 2020 ([Pub. L. 116-92](#)).

(xi) *Part 226 - Other Socioeconomic Programs.* (A) Use the clause at [252.226-7001](#), Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, as prescribed in [226.104](#), to comply with section 8021 of Pub. L. 107-248 and similar sections in subsequent DoD appropriations acts.

(B) Use the provision at [252.226-7002](#), Representation for Demonstration Project for Contractors Employing Persons with Disabilities, as prescribed in [226.7203](#).

(xii) *Part 227 - Patents, Data, and Copyrights.* (A) Use the clause at [252.227-7013](#), Rights in Technical Data-Noncommercial Items, as prescribed in [227.7103-6\(a\)](#). Use the clause with its Alternate I as prescribed in [227.7103-6\(b\)\(1\)](#). Use the clause with its Alternate II as prescribed in [227.7103-6\(b\)\(2\)](#), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq.*

(B) Use the clause at [252.227-7015](#), Technical Data-Commercial Items, as prescribed in [227.7102-4\(a\)\(1\)](#), to comply with 10 U.S.C. 2320. Use the clause with its Alternate I as prescribed in [227.7102-4\(a\)\(2\)](#), to comply with 10 U.S.C. 8687 and 17 U.S.C. 1301, *et seq.*

(C) Use the clause at [252.227-7037](#), Validation of Restrictive Markings on Technical Data, as prescribed in [227.7102-4\(c\)](#).

(xiii) *Part 232 - Contract Financing.* (A) Use the clause at [252.232-7003](#), Electronic Submission of Payment Requests and Receiving Reports, as prescribed in [232.7004](#), to comply with 10 U.S.C. 2227.

(B) Use the clause at [252.232-7006](#), Wide Area WorkFlow Payment Instructions, as prescribed in [232.7004\(b\)](#).

(C) Use the clause at [252.232-7009](#), Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in [232.1110](#).

(D) Use the clause at [252.232-7010](#), Levies on Contract Payments, as prescribed in [232.7102](#).

(E) Use the clause at [252.232-7011](#), Payments in Support of Emergencies and Contingency Operations, as prescribed in 232.908.

(F) Use the provision at [252.232-7014](#), Notification of Payment in Local Currency (Afghanistan), as prescribed in 232.7202.

(G) Use the clause at [252.232-7017](#), Accelerating Payments to Small Business Subcontractors - Prohibition on Fees and Consideration, as prescribed in [232.009-2\(2\)](#), to comply with 10 U.S.C. 2307(a).

(xiv) *Part 237 - Service Contracting.* (A) Use the clause at [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in [237.173-5](#), to comply with section 1038 of Pub. L. 111-84.

(B) Use the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees, as prescribed in [237.171-4](#), to comply with section 1092 of Pub. L. 108-375.

(xv) *Part 239 - Acquisition of Information Technology.* (A) Use the provision [252.239-7009](#), Representation of Use of Cloud Computing, as prescribed in [239.7604\(a\)](#).

(B) Use the clause [252.239-7010](#), Cloud Computing Services, as prescribed in [239.7604\(b\)](#).

(C) Use the provision at [252.239-7017](#), Notice of Supply Chain Risk, as prescribed in [239.7306\(a\)](#), to comply with 10 U.S.C. 2339a.

(D) Use the clause at [252.239-7018](#), Supply Chain Risk, as prescribed in [239.7306\(b\)](#), to comply with 10 U.S.C. 2339a.

(xvi) *Part 243 - Contract Modifications.* Use the clause at [252.243-7002](#), Requests for Equitable Adjustment, as prescribed in [243.205-71](#), to comply with 10 U.S.C. 2410.

(xvii) *Part 244 - Subcontracting Policies and Procedures.* Use the clause at [252.244-7000](#), Subcontracts for Commercial Items, as prescribed in [244.403](#).

(xviii) *Part 246 - Quality Assurance.*

(A) Use the clause at [252.246-7003](#), Notification of Potential Safety Issues, as prescribed in [246.370\(a\)](#).

(B) Use the clause at [252.246-7004](#), Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in [246.270-4](#), to comply with section 807 of Pub. L. 111-84.

(C) Use the clause at [252.246-7008](#), Sources of Electronic Parts, as prescribed in [246.870-3\(b\)](#), to comply with section 818(c)(3) of Public Law 112-81, as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291 and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

(xix) *Part 247 - Transportation.*

(A) Use the clause at [252.247-7003](#), Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in [247.207](#), to comply with section 884 of Pub. L. 110-417.

(B) Use the provision at [252.247-7022](#), Representation of Extent of Transportation by Sea, as prescribed in [247.574\(a\)](#).

(C) Use the basic or one of the alternates of the clause at [252.247-7023](#), Transportation of Supplies by Sea, as prescribed in [247.574\(b\)](#), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)).

(1) Use the basic clause as prescribed in [247.574\(b\)\(1\)](#).

(2) Use the alternate I clause as prescribed in [247.574\(b\)\(2\)](#).

(3) Use the alternate II clause as prescribed in [247.574\(b\)\(3\)](#).

(D) Use the clause [252.247-7025](#), Reflagging or Repair Work, as prescribed in [247.574\(c\)](#), to comply with 10 U.S.C. 2631(b).

(E) Use the provision at [252.247-7026](#), Evaluation Preference for Use of Domestic Shipyards - Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in [247.574\(d\)](#), to comply with section 1017 of Pub. L. 109-364.

(F) Use the clause at [252.247-7027](#), Riding Gang Member Requirements, as prescribed in [247.574\(e\)](#), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417).

(G) Use the clause at [252.247-7028](#), Application for U.S. Government Shipping Documentation/Instructions, as prescribed in [247.207](#).

212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) *Tailoring inconsistent with customary commercial practice.*

The head of the contracting activity is the approval authority within the DoD for waivers under FAR 12.302(c).

SUBPART 212.5 —APPLICABILITY OF CERTAIN LAWS TO THE ACQUISITION OF COMMERCIAL ITEMS AND COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS

212.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iii) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(iv) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(v) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(vi) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(vii) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

(viii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards (see [252.242-7004](#)).

(ix) 107 Stat 1720 (Section 843(a), Pub. L. 103-160), Reporting Requirement Regarding Dealings with Terrorist Countries.

(x) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see [225.7009-3](#) (section 8065 of Pub. L. 107-117).

(xi) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) and similar sections in subsequent DoD appropriations acts.

(c) The applicability of the following laws has been modified in regard to contracts for the acquisition of commercial items:

(i) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

(ii) 10 U.S.C. 2306a, Truth in Negotiations Act (see FAR 15.403-1(b)(3)).

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2306(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 2313(c), Examination of Records of a Contractor.

(iii) 10 U.S.C. 2324, Allowable Costs Under Defense Contracts.

(iv) 10 U.S.C. 2327, Reporting Requirement Regarding Dealings with Terrorist Countries.

(v) 10 U.S.C. 2384(b), Requirement to Identify Suppliers.

(vi) 10 U.S.C. 2391 note, Notification of Substantial Impact on Employment.

(vii) 10 U.S.C. 2393, Prohibition Against Doing Business with Certain Offerors or Contractors.

(viii) 10 U.S.C. 2397(a)(1), Reports by Employees or Former Employees of Defense Contractors.

(ix) 10 U.S.C. 2397b(f), Limits on Employment for Former DoD Officials.

(x) 10 U.S.C. 2397c, Defense Contractor Requirements Concerning Former DoD Officials.

(xi) 10 U.S.C. 2408(a), Prohibition on Persons Convicted of Defense Related Felonies.

(xii) 10 U.S.C. 2410b, Contractor Inventory Accounting System Standards.

(xiii) 10 U.S.C. 2501 note, Notification of Proposed Program Termination.

(xiv) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

(xv) 10 U.S.C. 2631, Transportation of Supplies by Sea (except as provided in the clause at [252.247-7023](#) , Transportation of Supplies by Sea).

(xvi) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years, unless the restriction specifically applies to commercial items. For the restriction that specifically applies to commercial ball or roller bearings as end items, see [225.7009-3](#) (section 8065 of Pub. L. 107-117).

(xvii) Section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) and similar sections in subsequent DoD appropriations acts.

(b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:

(i) 10 U.S.C. 2393(d), Subcontractor Reports Under Prohibition Against Doing Business with Certain Offerors (see FAR 52.209-6).

(ii) 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203-6).

212.505 Applicability of certain laws to contracts for the acquisition of COTS items.

Paragraph (a)(1) of 10 U.S.C. 2533b, Requirement to buy strategic materials critical to national security from American sources, is not applicable to contracts and subcontracts for the acquisition of commercially available off-the-shelf items, except as provided at [225.7003-3](#) (b)(2)(i).

SUBPART 212.6 —STREAMLINED PROCEDURES FOR EVALUATION AND SOLICITATION FOR COMMERCIAL ITEMS

212.602 Streamlined evaluation of offers.

(b)(i) For the acquisition of transportation and transportation-related services, also consider evaluating offers in accordance with the criteria at [247.206](#) (1).

(ii) For the acquisition of transportation in supply contracts that will include a significant requirement for transportation of items outside the contiguous United States, also evaluate offers in accordance with the criterion at [247.301-71](#) .

(iii) For the direct purchase of ocean transportation services, also evaluate offers in accordance with the criteria at 247.573-2(c).

SUBPART 212.70 —RESERVED

SUBPART 212.71 —PILOT PROGRAM FOR ACQUISITION OF MILITARY-PURPOSE NONDEVELOPMENTAL ITEMS

212.7100 Scope.

This subpart establishes the pilot program authorized by section 866 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383), as modified by section 892 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92).

212.7101 Definitions.

As used in this subpart—

“Military-purpose nondevelopmental item” means a nondevelopmental item that meets a validated military requirement, as determined in writing by the responsible program manager, and has been developed exclusively at private expense. An item shall not be considered to be developed at private expense if development of the item was paid for in whole or in part through—

(1) Independent research and development costs or bid and proposal costs, per the definition in FAR 31.205-18, that have been reimbursed directly or indirectly by a Federal agency or have been submitted to a Federal agency for reimbursement; or

(2) Foreign government funding.

“Nondevelopmental item” is defined in FAR 2.101 and also includes previously developed items of supply that require modifications other than those customarily available in the commercial marketplace if such modifications are consistent with the requirement at [212.7102-1](#) (c)(1).

212.7102 Pilot program.

212.7102-1 Contracts under the program.

The contracting officer may utilize this pilot program to enter into contracts for the acquisition of military-purpose nondevelopmental items. See PGI [212.7102](#) for file documentation requirements. Each contract entered into under the pilot program shall—

(a) Be a firm-fixed-price contract, or a fixed-price contract with an economic price adjustment clause;

(b) Be in an amount not in excess of \$100 million;

(c) Provide—

- (1) For the delivery of an initial lot of production quantities of completed items not later than nine months after the date of the award of such contract; and
- (2) That failure to make delivery as provided for under paragraph (c)(1) may result in termination for cause; and
- (d) Be—
 - (1) Exempt from the requirement to submit certified cost or pricing data;
 - (2) Exempt from the cost accounting standards under 41 U.S.C. 1502; and
 - (3) Subject to the requirement to provide data other than certified cost or pricing data for the purpose of price reasonableness determinations.

212.7102-2 Reporting requirements.

Departments and agencies shall prepare a consolidated annual report to provide information about contracts awarded under this pilot authority. The report shall be submitted to the Office of the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), by October 31 each year in accordance with the procedures at PGI [212.7102](#) . See PGI [212.7102](#) for annual reporting format.

212.7102-3 Sunset of the pilot authority.

- (a) The authority to carry out the pilot program described in this subpart expires on December 31, 2019.
- (b) The expiration under paragraph (a) of this section of the authority to carry out the pilot program will not affect the validity of any contract awarded under the pilot program before the expiration of the pilot program under that paragraph.

212.7103 Solicitation provision.

Use the provision at [252.212-7002](#) , Pilot Program for Acquisition of Military-Purpose Nondevelopmental Items, in solicitations when use of the pilot program is planned and the applicability criteria of [212.7102-1](#) are met.